



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/730,760	12/08/2003	John A. Dyjach	279.663US1	3450
21186 7590 10/25/2007 SCHWEGMAN, LUNDBERG & WOESSNER, P.A. P.O. BOX 2938 MINNEAPOLIS, MN 55402			EXAMINER SMITH, TERRI L	
			ART UNIT 3762	PAPER NUMBER
			MAIL DATE 10/25/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/730,760

Applicant(s)

DYJACH ET AL.

Examiner

Terri L. Smith

Art Unit

3762

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11 September 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-60 is/are pending in the application.
- 4a) Of the above claim(s) 1-28 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 29-60 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____.

DETAILED ACTION

Response to Arguments

1. Applicant's request for reconsideration of the finality of the rejection of the last Office Action during the telephone interview on 04 September 2007 is persuasive and, therefore, the finality of that Action is withdrawn.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office Action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 29–43, 45–56, 58, 59 and 60 are rejected under 35 U.S.C. 102(b) as being anticipated by Kramer et al., U.S. Patent Application Publication 2002/0133198.

4. Regarding claims 29, 31–35, 49, 53, 54, 56, 58 and 59 Kramer et al. disclose a plurality of interface channels, a plurality of electrodes, at least one lead (e.g., FIG. 6), a plurality of interface channels adapted to deliver pacing pulses and to receive sensed cardiac signals (e.g., FIGS. 1 and 3, elements 100 and 300, respectively; FIG. 4; paragraphs [0039], [0041] and [0069]);

a memory (e.g., FIG. 7, element 726); a controller (e.g., element 728) adapted to control the prescribed CRT, ...control delivery of pacing pulses, processing of sensed signals, and recording of data to memory, ... (e.g., FIGS. 1–5; paragraphs [0069]–[0073]),

the prescribed CRT including pacing a left ventricle with respect to a cardiac event at a second cardiac site ... (e.g., FIG. 5; paragraphs [0033], [0051], [0052] and [0070]–[0073]),

Art Unit: 3762

a communication circuit (e.g., element 732), an external device for presentation of data trends ... includes recorded data and time associated with recorded data (e.g., FIGS. 5–6 and their corresponding detailed descriptions throughout the written specification; element 644-telemetry device and element 640-medical device programmer; paragraphs [0058]–[0069]);

a programmer (e.g., element 640) including a memory (e.g., element 704); a controller (e.g., 706); a communication circuit (e.g., element 712); and a monitor (e.g., element 648).

5. With respect to claims 30, 50 and 55, Kramer et al. disclose a chronic, ambulatory data (e.g., element 200; paragraphs [0019], [0025], [0028], [0036], [0039] and [0052]).

6. Regarding claims 36–43 and 45–48, Kramer et al. disclose the various claimed limitations of the controller adapted to trend data samples of data indicative of whether the left ventricle cardiac site was paced at the predetermined time interval with respect to the cardiac event at the second cardiac site and the data including a value corresponding to the various claimed limitations as set forth in the present invention as discussed throughout paragraph 4 herein above as well as disclosed in the detailed descriptions of Kramer et al. of the figures cited herein above.

7. With respect to claim 60, Kramer et al. disclose means for detecting a trigger, and means for trending data samples based on a trigger (e.g., FIGS. 1–3 and 5; paragraphs [0021]–[0022] where it is the Examiner's position that the trigger limitation is realized by the information provided by the electrogram that helps select which improved resynchronization parameter values are desired. The Examiner's position is consistent with Applicant's written specification on page 11, lines 13–28 that discusses the trigger limitation.).

Claim Rejections - 35 USC § 103

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office Action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the Examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the Examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

10. Claims 44 and 57 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kramer et al., U.S. Patent Application 2002/0133198.

11. Regarding claim 44, Kramer et al. disclose the essential features of the claimed invention as described above except for data that includes a value corresponding to atrial tachycardia (AT). However, it is well known in the art to use data that includes a value corresponding to atrial tachycardia (AT) to yield the predictable result of effectively recognizing a cardiac anomaly in a forecast cardiac event and subsequently select and initiate appropriate cardiac resynchronization therapy.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the invention of Kramer et al. to include data that includes

Art Unit: 3762

a value corresponding to atrial tachycardia (AT) to yield the predictable result of providing appropriate, effective and safe cardiac resynchronization therapy.

12. With respect to claim 57, Kramer et al. disclose the essential features of the claimed invention as described above except for a table of trended data. However, it is well known in the art to use a table of trended data to yield the predictable results of clearly and accurately displaying patient information for ease of interpretation and diagnosis by a medical care provider.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the invention of Kramer et al. to include a table of trended data to yield the predictable results of rendering easy-to-read patient information for accurate diagnosis by a medical care provider.

Conclusion

13. The prior art made of record and not relied upon is considered pertinent to Applicant's disclosure. Ganion et al., U.S. Patent 7,184,833 and Stahmann et al., U.S. Patent Application Publication 2002/0082660 disclose a value corresponding to atrial tachycardia (AT). Marcus et al., U.S. Patent 6,978,184 discloses a table of trended data.

14. Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Terri L. Smith whose telephone number is (571) 272-7146. The Examiner can normally be reached on Monday - Friday between 7:30 a.m. - 4:30 p.m..

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Angela Sykes can be reached on (571) 272-4955. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3762

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



TLS

October 24, 2007

24 October 2007

GEORGE R. EVANISKO
PRIMARY EXAMINER
10/25/07